ffice - Supreme Court, U.S
FILED
SEP 29 1984
XANDER L. STEVAS,
CLERK

No. 83-6061

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

JOSE GARCIA AND FRANCISCO GARCIA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

REPLY BRIEF

THEODORE J. SAKOWITZ
Federal Public Defender
301 North Miami Avenue
Miami, Florida 33128-7787

CHARLES G. WHITE
100 N.W. 37th Avenue
First Floor
Miami, Florida 33125
(305) 649-1023
(Pro hac vice)

Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

13 pp

QUESTIONS PRESENTED

WHETHER A PROSECUTION UNDER 18 U.S.C. § 2114 REQUIRES A POSTAL NEXUS IN ORDER FOR A CONVICTION TO BE SUSTAINED.

A) WHETHER THE PLAIN MEANING DOCTRINE PROHIBITS REVIEW OF CONGRESSIONAL INTENT WHEN INTERPRETING 18 U.S.C. § 2114.

B) WHETHER CONGRESSIONAL INTENT REQUIRES A POSTAL NEXUS IN PROSECUTIONS OF 18 U.S.C. § 2114.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
ARGUMENT:	
That Section 2114 of Title 18 requires a postal nexus in order to sustain a conviction	1
A. The plain meaning doctrine does not operate as a rule of exclusion to prevent review of legislative intent, as conceded by the Government	2
B. A plain reading of Section 2114 reveals it is ambiguous	2
C. Application of the rule of Ejusdem Generis to the 1935 amendment to Section 2114 resolves any ambiguity and confirms Congressional intent to include a postal nexus requirement	4
D. The Government's interpretation that Congress intended the amended Section 2114 to have a wide scope would lead to absurd results and cause problems in subsequent judicial review	6
CONCLUSION	8

TABLE OF AUTHORITIES

CASES:	Page
Cleveland v. *United States*, 329 U.S. 14 (1946)	5
Gooch v. *United States*, 297 U.S. 124 (1936)	5
Jones v. *United States*, 72 F.2d 873	6
Randazzo v. *United States*, 300 F. 794 (8th Cir. 1924)	6
Standefer v. *United States*, 447 U.S. 10 (1979)	5
United States v. *Birrel*, 266 F. Supp. 539 (S.D.N.Y. 1967)	3
United States v. *Bitty*, 208 U.S. 393 (1907)	5
United States v. *Chase*, 135 U.S. 255 (1889)	5
United States v. *Feola*, 420 U.S. 671 (1975)	7
United States v. *Fisher*, 2 Cranch [6 U.S.] 358 (1805)	4
United States v. *Naftalin*, 441 U.S. 768 (1978)	3
United States v. *Powell*, 423 U.S. 87 (1975)	5
United States v. *Reeves*, 38 F. 404 (C.C.W.D. Texas 1889)	6
United States v. *Spears*, 449 F.2d 996 (D.C. App. 1976)	1
United States v. *Stever*, 222 U.S. 167 (1911)	5
United States v. *Yermian*, 104 S. Ct. 2936 (1984)	4
OTHER SOURCES:	
Black's Law Dictionary (5th Ed. 1979)	4
SUTHERLAND STATUTORY CONSTRUCTION, 4th Ed., Vol. 2A, § 47.17	4

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

No. 83-6061

JOSE GARCIA AND FRANCISCO GARCIA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

REPLY BRIEF

ARGUMENT

THAT SECTION 2114 OF TITLE 18 REQUIRES A POSTAL NEXUS IN ORDER TO SUSTAIN A CONVICTION

The issue before the Court remains the interpretation of the scope of 18 U.S.C. § 2114 after an amendment in 1935. The statute had historically applied only to prosecutions for robberies of lawful custodians of mail matter. *See United States* v. *Spears,* 449 F.2d 946 (D.C. App. 1971). The antecedents of this statute extended back to 1792 and were enacted by Congress utilizing its power over the post office. *Id.* at 950. U.S. Const. art. 1, § 8, cl. 7. In 1935 Congress amended the

statute (then found in 18 U.S.C. § 320) to include robbing or attempting to rob lawful custodians of mail matter "or any money or other property of the United States."

A. The Plain Meaning Doctrine Does Not Operate As A Rule Of Exclusion To Prevent Review Of Legislative Intent, As Conceded By The Government

The Government contends that any inquiry into legislative history is foreclosed because the meaning of the added words are unambiguous. Invoking the so-called plain meaning doctrine, the Government asks this Court to adopt a mechanistic formula of statutory construction that precludes a consideration of the actual intent of Congress. Constantly beseeching the Court to apply the plain meaning doctrine as a rule of exclusion, the Government suddenly gracefully concedes the point. (Resp. Br. 16 n. 4).

B. A Plain Reading Of Section 2114 Reveals It Is Ambiguous

The Government then confesses a complete misunderstanding of Petitioners' argument. Part of this misunderstanding consists of the claim by the Government that their interpretation of the literal meaning of the amended statute is conceded by Petitioners. (Resp. Br. 18). In fact, the amended statute is totally ambiguous on its face.

The Government contends that the amended statute contains two categories of crime separated by the disjunctive "or". (Resp. Br. 12-14). What is missed by the Government is that under a "plain reading" of the statute, the conclusion is inescapable that there are two disjunctives separating three separate categories of crime: (1) mail matter, (2) money, (3) other property of the United States. There is nothing in the "plain meaning" of the statute that permits "money" to be further modified to mean "money of the United States." As a matter of fact, such a meaning would contradict the clear intent of Congress to include money held in the lawful custody of the Post Office, within the ambit of Section 2114. Also, such a reading would be more restrictive than the original statute. There is nothing strained about such an interpretation, considering the Government's apparent position that the first "or" means "or", but the second "or" means "and".

The meaning of the statute becomes more ambiguous when both "or's" are given the meaning normally applied to them. *See United States* v. *Naftalin,* 441 U.S. 768 (1978) and *United States* v. *Birrell,* 266 F. Supp. 539, 542-543 (S.D.N.Y. 1967), cited in Respondent's Brief at 13. In that event, each of the three categories should be able to stand alone. Category One and Three ("mail matter") and "other property of the United States") make good sense, but Category Two ("money") is absurd standing alone. The Congress would then have enacted a Federal robbery statute without any jurisdictional basis. Obviously, such ambiguity begs for clarification by judicial interpretation. It also gives credence to the complaints of the congressmen participating in the floor debates that the amended statute was horribly drafted. 79 Cong. Rec. 7875.

Now that ambiguity has been documented, the road is clear to begin the real business of judicial interpretation; the determination of legislative intent.

United States v. *Yermian*, 104 S. Ct. 2936, 2944 (1984) (Rehnquist dissent) citing *United States* v. *Fisher*, 2 Cranch [6 U.S.] 358, 386 (1805) (Marshall, C. J.).

C. Application Of The Rule Of Ejusdem Generis To The 1935 Amendment To Section 2114 Resolves Any Ambiguity And Confirms Congressional Intent To Include A Postal Nexus Requirement

There is one rule of statutory construction, which makes the amended statute completely unambiguous. This is the rule of *ejusdem generis*. Black's Law Dictionery (5th Ed. 1979) defines the rule:

> [W]here general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. [citations omitted].

Applying this canon of statutory construction to the amended Section 2114 provides the postal nexus intended by Congress. Ambiguity disappears and the "plain meaning" of the statute can no longer be evoked to stretch the scope of the statute to unheard of dimensions. Massive litigation is headed off instantly as Section 2114 settles down into what it was always intended to be: the Postal Robbery Statute.

The rule of *ejusdem generis* is not a technical exercise in semantics. It contains its own method of analysis. Sands, SUTHERLAND STATUTORY CONSTRUCTION, 4th Ed., Vol. 2A, § 47.17 et seq. Important to the analysis is the concept of the "class": "generalizations which associate items for a particular purpose

or treatment." *Id.* at 110. Essential to the determination of a class remains the intent of the legislature.

It was because in other cases, defendants neglected legislative intent in determining the scope of the applicable "class," that this Court has rejected this argument in the recent past. *Standefer* v. *United States*, 447 U.S. 10 (1979). *United States* v. *Powell*, 423 U.S. 87 (1975). *Cleveland* v. *United States*, 329 U.S. 14 (1946). *Gooch* v. *United States*, 297 U.S. 124 (1936). *United States* v. *Bitty*, 208 U.S. 393 (1907). When the manifest intent of Congress is at variance with a narrow construction of a statute using the rule of *ejusdem generis*, the above cases show the manifest purpose of Congress controls.

Despite the tendency of the Congress to apply broad purposes to the statutes analyzed above, an analysis of the legislative history of the 1935 Amendment does not reveal any broad purpose except the increased protection over the postal function. The "class" remains confined within the already wide variety of mail matter originally delineated in the statute. In essence, mail matter belongs to private individuals, not the post office. Surely, any money in the lawful custody of postal officials, coupled with property of the United States in their lawful custody, expands the areas protected by the statute without causing a widening of the scope to create absurd results. (See following section). In the instant case, the Court should follow the analysis offered by opinions in *United States* v. *Stever*, 222 U.S. 167 (1911), and *United States* v. *Chase*, 135 U.S. 255 (1889).

D. The Government's Interpretation That Congress Intended The Amended Section 2114 To Have A Wide Scope Would Lead To Absurd Results And Cause Problems In Subsequent Judicial Review

Future litigants will have a whole range of issues available to add to the congestion of the Federal appellate process if this Court accepts the Government's position in this case. For example, in the past, judicial interpretation focused on who could have "lawful charge, control, or custody" of mail matter. *See, Jones* v. *United States*, 72 F.2d 873 (7th Cir. 1934). *Randazzo* v. *United States*, 300 F. 794 (8th Cir. 1924). *United States* v. *Reeves*, 38 F. 404 (C.C.W.D. Texas 1889). Using postal regulations as a guide, the term had meaning, but give the statute the scope suggested by the Government, and more questions are raised than answered. Anyone from a confidential informant with heroin provided by the DEA for a reverse sting to a Government maintenance worker whose hammer is stolen at gunpoint could be considered a "lawful custodian" of "money or other property of the United States."

The jurisdictional basis of Section 2114 changes when the Government's construction prevails. The power to establish a postal system contained in the Constitution does not automatically extend to "money or other property of the United States," unless there is some implied limitation. Should there have been some legislative history concerning intent to invoke another power?

Should it be assumed, as the Government so appears, that no scienter is required for a conviction under this statute? In the instant case, neither of the petitioners had any knowledge that they were attempting to rob "lawful custodians of government money," until they were arrested. (*See* Statement of Facts in Pet. Br. 2-8). While this Court has eliminated scienter in Section 111 offenses (*United States* v. *Feola*, 420 U.S. 671 (1975)), query whether such a course of action is advisable when there is twenty-five year mandatory sentence at stake.

Finally, if the Government's position prevails, there would be an immediate loss of sentencing discretion by the Federal judiciary. By manipulating the charges, the Government could reduce the judiciary to rubber stamping its own sentencing decisions. Consider the potential application to undercover operations. (For instance, the case at bar). If a Federal law enforcement agency can plant money or drugs on an informant, allow him to infiltrate some alleged "bad guys," and hope someone gets greedy and tries a "rip-off," they could sustain a mandatory twenty-five year penalty.

Contrary to the Government's contention, under its interpretation, Section 2114 does not "fit harmoniously into the fabric of federal criminal law." (Resp. Br. 36). It could easily become the statute of choice for over-zealous prosecutors, swallowing whole 18 U.S.C. § 2112.

There is no defect in reasoning underlying the propriety of singling out postal employees or other authorized custodians of the mail for special protection. (Resp. Br. 11). Historically, letter carriers have travelled the roads of America unarmed. Surely Congress was more concerned with deterring violent attacks (even attempted robberies) of postal employees than usually armed Federal law enforcement officers.

Most importantly, application of the rule *ejusdem generis* to the interpretation of Section 2114 completely comports with the legislative history. The "snippets" which petitioners excised from the floor debates constitute the only clear expressions of Congress' intent. They were made by Congressman Dobbins, who was perhaps never ordained "floor manager," but whose job it was to steer Post Office legislation through the House of Representatives. *See* 79 Cong. Rec. 7874, for Dobbins leading the debate on another bill requested by the Post Office. The Government's contention that the issue before this Court was never discussed in Congress is without merit, and to the extent that it has merit, further discredits the Government's position in light of the strict construction of criminal statutes required by the Constitution.

CONCLUSION

For the reasons set forth above, Petitioners ask this Court to vacate the conviction as to Count III of the Indictment and enter a judgment of Acquittal as to that Count.

Respectfully submitted,

THEODORE J. SAKOWITZ
Federal Public Defender
301 North Miami Avenue
Miami, Florida 33128-7787

CHARLES G. WHITE
100 N.W. 37th Avenue
First Floor
Miami, Florida 33125
(305) 649-1023
(Pro hac vice)

Counsel for Petitioners